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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Sixteenth session
27-31 July 1998
Item 7 of the provisional agenda

STANDARD-SETTING ACTIVITIES

Note by the secretariat

Information received from indigenous organizations

1. In resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, together with information requested annually by the Secretary-General, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. The Sub-Commission, in its resolution 1997/14 of 22 August 1997, requested the Secretary-General to transmit the report of the Working Group to intergovernmental, indigenous and non-governmental organizations and to invite them to provide information. The Commission on Human Rights, in its resolution 1998/13 of 9 April 1998, urged the Working Group to continue its comprehensive review of developments. The present document contains information in relation to item 7 of the provisional agenda.

"TUPAC AMARU" INDIAN MOVEMENT

[Original: Spanish]
[25 May 1998]

Self-determination of indigenous peoples in the context of international law

I. INDIGENOUS STRUGGLE FOR SELF-DETERMINATION

1. The right of peoples and nations to self-determination is an issue that goes far back in time and space, and is probably the most controversial idea to arise in the entire history of the struggle between the conquerors and the conquered.

2. In open defiance of the positive trend in social and political history and in contradiction with international instruments, States continue to deny indigenous peoples the just recognition of their customary right to self-determination. More than 500 years since the discovery of the New World and the "Encounter of Two Cultures", Western culture continues to impose on indigenous peoples its own world view, its own model of production and consumption and its own political concepts, as values that are sacrosanct.

3. An objective interpretation of customary law based on age-old practice, shows us that both in law and in practice self-determination has been vested in peoples since time immemorial and has never been the property of States. If this concept is indeed a universal, indivisible and interdependent one in the development of man and society, then we see no reason why it should be haggled over like a commodity in the marketplace.

4. The most basic understanding of democracy and social justice should lead States to recognize this legitimate and inalienable right explicitly, without restrictions or conditions, to regulate its application and to guarantee its full exercise, in conformity with prevailing international standards and instruments.

5. In resolution 1514 (XV) of 14 December 1960, the "Declaration on the Granting of Independence to Colonial Countries and Peoples", the United Nations General Assembly at long last recognized the self-determination of all peoples as one of the basic principles of public international law. This inalienable right invests colonized and dependent countries with the power freely to determine their political status, freely to pursue their economic, social and cultural development and freely to dispose of their natural wealth and resources. In essence, as we have already stated, this right is a basic requirement for the effective enjoyment of all other fundamental rights and freedoms.

6. Anyone who claims that this right ceased to apply once the colonial countries had been granted their independence does not understand that it is a right in a state of constant evolution. An objective and consistent analysis of evolving international standards shows that this inalienable right applies naturally, without objection or reservations, to indigenous peoples.

7. There is no doubt that the instrument which has universal scope in this area is the Charter of the United Nations, Articles 1, 2 and 55 of which establish the need "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".

8. From a historical, social, political and moral point of view, the right of peoples to self-determination as political and social entities is the spiritual cornerstone of contemporary international law, which by its very essence and nature considers society as constantly evolving towards peaceful coexistence; however, it condemns and rejects any interference in the internal affairs of other States in the name of "international humanitarian law".

9. In the light of these principles, universally recognized by the international community, article 1 of the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights stipulates: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

10. In pursuance of this provision, the above-mentioned instruments not only invest peoples with the right freely to dispose of their natural wealth and resources, but also urge States to fulfil their obligations to promote and respect the effective exercise of self-determination, in conformity with the provisions of the Charter of the United Nations.

II. SUBJECTIVE INTERPRETATION OF THE CONCEPT OF SELF-DETERMINATION

11. For over a decade we have watched the western Powers of the North, together with the dominant elites in the South, attempt to delay the consideration and adoption of the declaration, water it down in general, weaken the legal force of its provisions in particular, and thus put off indefinitely the day when indigenous peoples will obtain their rights. Their arguments, endlessly reiterated in United Nations forums for 15 years now, to the effect that unilateral self-determination for aboriginal peoples would cause the break-up of national States and threaten their sovereignty and territorial integrity, have no legal foundation and no moral justification whatsoever.

12. On the threshold of the twenty-first century, it is difficult to imagine how indigenous peoples, some of whom are dying out, such as the Yanomamis in Brazil, the Chiapas Indians, under attack from modern weaponry, Native Americans in the United States of America, destined for mere survival on "reservations", or the aboriginal peoples of northern Siberia, doomed to a slow genocide, could pose a threat to the sovereignty of the economic and military Powers.

13. The nightmare fantasy of a break-up or secession, the imaginary fears of the State's authority being undermined and the supposed threat to territorial integrity have been the products time and again of a subjective and tendentious interpretation of the concept of self-determination.

14. States deliberately forget another aspect of General Assembly resolution 1514 (XV) of 1960, which, besides bringing an end to colonialism,

is also aimed at safeguarding national sovereignty. Paragraph 6 stipulates that "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."

15. Despite this clear and precise provision on national integrity, the Governments of the United States of America, Argentina, Brazil and others indulge in erroneous interpretations with the deliberate intention of distinguishing between the concept of self-determination in domestic and in external law. In domestic law it would apply to indigenous peoples considered as minorities, ethnic groups, i.e. subnations or second-class groups; while in external law it protects the dominant, oppressive nation, i.e. the elites of the North and South, that wield political and economic power.

16. For the purposes of this arbitrary classification, which is not to be found in any international lawbook, aboriginal and native peoples are not recognized as peoples or subjects of law, and therefore lack full capacity to enjoy the right to self-determination. To any discerning jurist, the concept of self-determination is inherent, inalienable, indivisible and universal with regard to both interpretation and practical application. The Universal Declaration of Human Rights, adopted 50 years ago, will not be universal in nature if nations are still being discriminated against and prevented from exercising self-determination.

17. These allegations with racist overtones raise another important aspect of the problem. The facts persistently remind us that the real threat to national integrity and sovereignty does not come from vanquished and colonized peoples, but from the old and new metropolitan countries of the North and the power elites of the South. What issue is actually involved? The reasons behind the systematic refusal to restore indigenous peoples' right freely to determine their own fate are economic, i.e. the vital economic and strategic interests of the economic and military Powers of the West.

18. In violation of General Assembly resolution 1803 (XVII) of 14 December 1962, which reaffirms the right of peoples and nations to permanent sovereignty over their natural wealth and resources, the transnational corporations in their headquarters and decision-making centres in the Western countries covet the fabulous natural resources, the oil, natural gas, gold, silver, uranium, diamonds, etc. that lie dormant in indigenous lands and territories.

19. How ironic! The Governments of Latin America claim to be defending national sovereignty, when it is they themselves, with their ultraliberal policies, that are unconditionally surrendering their natural resources to the greed of international capitalism. So just who is attacking whom, and who is threatening the sovereignty and independence of the national State?

20. In a State under the rule of law, the most logical and reasonable attitude would be to consider self-determination of indigenous peoples as part of an ongoing dialectic and introduce it as a new category of contemporary international law. By introducing into their constitutions and national laws new concepts and legal categories, such as self-determination, indigenous peoples, collective land rights and permanent sovereignty over natural

resources, etc., as a means of enhancing plurinational and pluricultural diversity, on a non-paternalistic basis and with no interest in seeing the Indian identity assimilated into that of the West, States could display a noble sense of responsibility and redress an age-old injustice.

III. LACK OF POLITICAL WILL

21. But experience has shown that the political will to resolve the distressing problems of indigenous peoples throughout the world is lacking. Fifteen years after work on the draft United Nations declaration on the rights of indigenous peoples began, the revised text has had to withstand the ravages of men and time, gradually losing its political and legal content, becoming watered down and reduced to a set of obsolete and abstract statements.

22. It is no accident that the provision on self-determination has been relegated from first to third place in the operative part of the declaration. This is the result of the political pressures and diplomatic manoeuvres of States bent on reducing the legal scope of self-determination and divesting it of its political importance as an inalienable, indivisible and natural right, in order to delay the achievement of indigenous rights indefinitely.

23. Let this much be clear: the right to self-determination in the form in which it is defined in article 3 of the draft declaration meets legitimate aspirations by providing for greater autonomy in internal government, meaning the governance and management of peoples' own destinies, and is not in the slightest way intended to create mini-States within national States, as those who criticize the principle that each people should be able freely to determine its own destiny would have us believe.

24. Legally speaking, administrative autonomy in local matters is intended to mean the right of aboriginal peoples and communities, within the national State, to manage and use their lands and natural resources and promote their cultural values - in particular, education, environmental protection, health, housing, employment and social welfare - through their own self-governing bodies.

25. There is no doubt that, in order for this autonomy to be exercised effectively, Ayllus (peasant communities), aboriginal communities and nations must have full capacity to govern themselves by their own laws, freely determine the forms of and conditions for their own development and assume their duties, together with the national community, as actors in political life and subjects of law.

26. On the eve of the fiftieth anniversary of the Universal Declaration of Human Rights, any policy aimed at breaking the determination of subjugated peoples to take their destinies in hand with dignity and on equal terms should be regarded as an irrational act, an unjust and discriminatory measure and one that is therefore incompatible with the spirit and letter of the Charter of the United Nations and the international instruments.

27. For the draft declaration rests on the principle of self-determination, which is its very foundation. This means that the adoption of the declaration

by the Assembly during the International Decade of the World's Indigenous People is an essential condition for the survival of aboriginal populations and the preservation of their identity.

28. This is a question not simply of recognizing an identity in itself, but of recognizing an identity for itself, i.e. of considering the Indian as an actor in history and a subject of law. Only then will indigenous peoples, under the protection of the principle of self-determination, be political and socio-economic entities with full powers of participation in both national life and the community of nations.

29. If the States parties to the agreements, international covenants and declarations do not assume their political responsibility to implement the inalienable rights of all nations which are succumbing to another form of neocolonial regime, without discrimination, still more forms of struggle will arise throughout the world, leading to a vast social upheaval for the sake of life and dignity, land and sovereignty, with unforeseeable consequences for international peace and security.